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JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Members, Assembly Committee on Education
FROM: Joe Quick, Government Relations Specialist
DATE: April 19, 2011
RE: **Assembly Bill 71**, relating to revocation for immoral conduct of a license issued by the Department of Public Instruction.

The Wisconsin Association of School Boards (WASB) **supports** Assembly Bill 71.

School board member delegates to the 2011 WASB Delegate Assembly, our policy making body, adopted the following resolution language last January:

“The WASB supports legislation to require the DPI to revoke the license of any teacher who has been dismissed or non-renewed by a school board for intentionally using school district technology to download, view or distribute pornographic material in violation of the district’s acceptable use policy. The WASB further supports requiring the DPI to make information about the disposition of such cases publicly available.”

The intent of this resolution is to establish a policy supporting requiring the DPI: a) to conduct revocation hearings and revoke the license of any teacher dismissed or non-renewed for intentionally using school district technology to download, view or distribute pornographic material in violation of the district’s acceptable use policy; and b) to make information on the disposition of cases involving such improper use of school district technology available to the public.

In adopting this resolution, school board member delegates took the position that some misuses of school district technology are so clearly inappropriate and injurious to a proper educational environment that they constitute a special category of activities that not only may harm students’ health, safety, welfare and education, but have no educational purpose or place in schools and could further subject a school district to civil liability for sexual harassment or sex discrimination.

Under current law, when these cases are reported to the state superintendent, there is no requirement that the state superintendent act promptly to hold a hearing or render a decision. Further, there is no requirement to make the decision available to the general public. The WASB, through its resolution and its support of this legislation, seeks to change that.

Because the Department of Public Instruction (DPI) process for investigating these cases is both completely discretionary and cumbersome and because results are not made public, the potential for repeat misconduct is great under current law. A teacher dismissed by one district for intentionally misusing district technology to engage in conduct that has no place in a school may not only be able to keep his or her license, but could potentially be hired to teach in another district where this conduct could be repeated. Further, even where a teaching license is revoked, because this information is not made readily available to the public, the revoked teacher maybe able to be hired, for example, as an aide in another district where this conduct may be repeated.

Under current law, a teacher or administrator terminated for repeatedly downloading and/or distributing obscene or pornographic materials in one district could potentially resume his or her teaching career in another district, particularly if for whatever reason proper background or reference checks do not disclose this activity. And because information about this conduct is not made public, the board in that other district may not be able to find out about the behavior. That board could easily face a potential situation in which it now has a teacher who parents do not wish to be teaching their children and who the community does not want to be in its classrooms.

Some states are light years ahead of Wisconsin in terms of transparency. The state of Vermont has made detailed information about teacher license revocation and other disciplinary actions available on its Website for years, allowing school districts to more easily conduct background checks on job applicants. We believe the DPI could easily provide similar information on its Website. (See: <http://education.vermont.gov/new/html/licensing/disciplinary.html#list>)

Additional Background

Some additional background may be helpful to committee members understanding of this issue.

Q: Who has the power to revoke a teaching license?

A: School boards have the power to dismiss or non-renew licensed employees for the type of conduct described in the WASB resolution and AB 71, but cannot affect their teaching license. That is entirely up to the DPI and the State Superintendent.

When such dismissals occur, school district administrators must report these dismissals to the state superintendent as “immoral conduct,” the category under which license revocations for such behavior are based.

While the applicable standard for *disciplining* or *discharging* a licensed employee for this type of conduct is likely to be set forth in a school board's policies and/or collective bargaining agreements, the standard for *license revocation* in these cases is, by statute, left to the discretion of the state superintendent. Through its resolution and its support of this legislation, the WASB seeks to change the statute to require revocation in those cases or fact situations described in the resolution.

Q: What standards govern license revocation?

A: The current license revocation statute (Wis. Stats. 115.31) *permits but does not require* revocation for this type of conduct. . It states that the state superintendent *may* revoke any teaching license or permit issued by the DPI on the grounds of immoral conduct or incompetency.

"Immoral conduct" is currently defined as conduct or behavior that is contrary to commonly accepted moral or ethical standards **and** that endangers the health, safety, welfare or education of any pupil. (Emphasis added.)

The word **"and"** in that definition is important. There must be **more** than a mere showing of immoral conduct. In order to revoke a teacher's license for immoral conduct, the state superintendent must find that there is clear and convincing evidence that the teacher engaged in the immoral conduct **and** the immoral conduct has a direct relationship to the health safety, welfare or education of any pupil.

A 1995 Wisconsin Court of Appeals decision states that a finding of immoral conduct alone is not an appropriate basis on which to revoke a teacher's license. There must be an additional finding that such conduct has a direct relationship to the health, safety, welfare or education of any pupil. Thus, under current law, the state superintendent must examine the conduct and its severity to determine the impact of the offense on the educational process.

That 1995 decision also held that a finding that a teacher can no longer be a "good role model" due to the immoral conduct **is not** sufficient grounds for revocation. Thus, when considering revoking a teacher's license, the state superintendent must look specifically at the nature of the conduct involved, not the community's reaction to it. That decision was rendered before widespread access to the Internet became common in schools.